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Frank Venegas JR.

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EXAMINER

WENDELL, MARK R

ART UNIT

PAPER NUMBER

3635

MAIL DATE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/771,227	<b>Applicant(s)</b> VENEGAS, FRANK	
	<b>Examiner</b> MARK R. WENDELL	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 15-20, 24-26, 32-36 is/are allowed.
- 6) ☒ Claim(s) 1-14, 21-23 and 27-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 8-11, 13-14, 21-23, and 27-31 rejected under 35 U.S.C. 103(a) as being unpatentable over Ulmer (US 4609183) in view of Savino (US 4236697). Regarding claims 1-3, 21, 23, 27-28, Ulmer illustrates in Figures 2-3 and discloses throughout the specification a cart corral system comprising:

- A first set of at least two spaced apart vertical rails (RFL and LFL);
- A base support (BF) supporting said first set of vertical rails in an upright position; said base support extending between said first set of vertical rails;
- At least two spaced apart horizontal rails (LFT, LRT, RFT, RRT) removably engaged with said vertical rails and positioned above said base support (BF);
- A second set of at least two spaced apart vertical rails (LRL, RRL) opposite of said first set of vertical rails and removably engaged with said horizontal rails;

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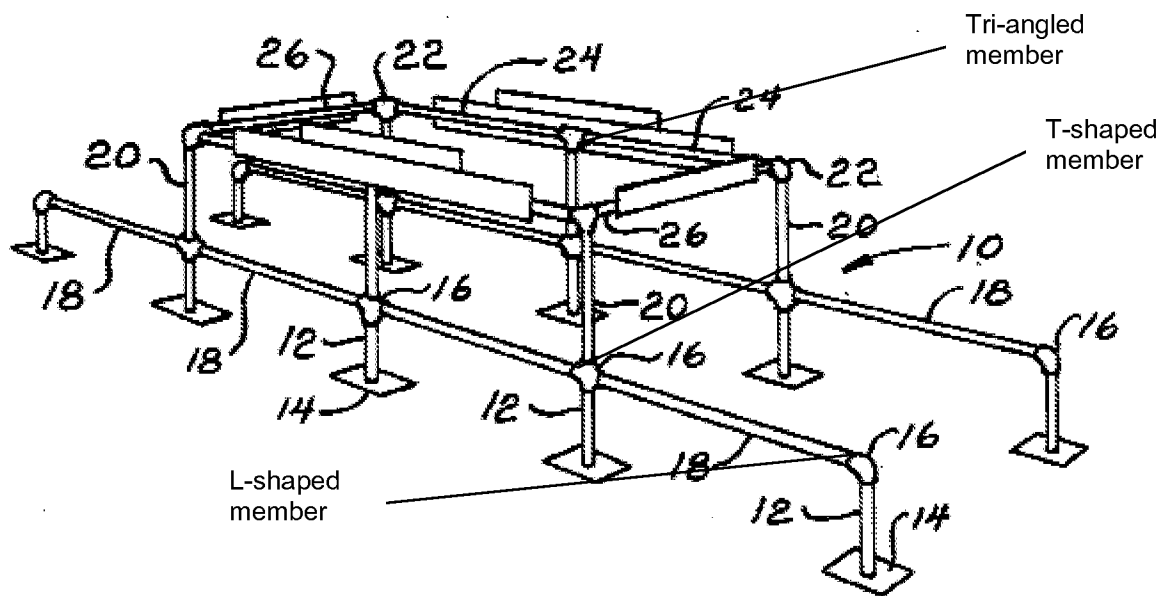
- Each of said vertical and horizontal rails having an outer diameter and exterior profile (which is inherent to every pipe-shaped object with a thickness);
- A second base support (BR) supporting said second set of vertical rails in an upright position; said second base support extending between said second set of vertical rails;
- Removable and replaceable polymerized sheathing surrounding each of said vertical rails having an interior and exterior diameter, the interior diameter equal to or greater than the outer diameter of said vertical rails and extending the length of said vertical rails;
- Removable and replaceable polymerized sheathing surrounding each of said horizontal rails having an interior and exterior diameter, the interior diameter equal to or greater than the outer diameter of each of said horizontal rails and extending the length of said horizontal rails (The examiner notes that Ulmer's specification lines 1-20 of column 3 states the use of a colored plastic coating surrounding the galvanized steel portions of the cart corral. A plastic coating certainly satisfies the limitation of a polymerized sheathing);

However, the reference does not disclose separable means for attaching the horizontal rails to the vertical rails comprising a T-shaped member formed of polymerized sheathing and having a hollow interior; wherein each leg of said T-shaped member has an interior profile identical to the exterior profile of said horizontal rails and said vertical

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rails; said interior profile having a diameter equal to or greater than the exterior diameter of said polymerized sheathing surrounding each of said horizontal rails and said vertical rails. The reference also does not disclose means for separably attaching said horizontal rails to said vertical rails comprising an L-shaped member formed of polymerized sheathing and having a hollow interior; wherein each leg of said L-shaped member has an interior profile identical to the exterior profile of said horizontal rails and said vertical rails; said interior profile having a diameter equal to or greater than the exterior diameter of said polymerized sheathing surrounding each of said horizontal rails and said vertical rails. The reference merely teaches the connection between members as being a loop and fasten connection that can be seen in Figures 2 and 3. It would have been obvious to one having ordinary skill in the art at the time of invention to modify the connection system of the members with that of Savino (see items 16 in Figure 1). Savino discloses in Column 2, lines 3-8 the coupling elements being used because they are threadable and easy to assemble and disassemble. Therefore it would have been obvious to one having ordinary skill in the art to modify the cart corral connections of Ulmer with those of Savino in order to easily and quickly replace members or poles that have been damaged by motor vehicles within the parking lot the assembly resides in (see column 1 of Ulmer). Furthermore, the examiner notes that both references disclose a maintenance-free corral system for storing shopping cart, therefore are considered analogous art.

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Regarding claims 8 and 22, Ulmer illustrates in Figures 2 and 3 comprising a fourth horizontal rail removably engaged with and extending between one of said sets of vertical rails at an angle to said at least two horizontal rails; said fourth horizontal rail positioned above one of said first and second base supports and having an outer diameter; a removable and replaceable polymerized sheathing surrounding said fourth horizontal rail having an interior diameter equal to or greater than the outer diameter of said horizontal rail and extending the length of said horizontal rail. The examiner notes that any one of LFT, LRT, RFT, or RRT of Ulmer can be considered the fourth horizontal rail since they all extend between the vertical rails at an angle (0 or 90 degrees depending on reference point) and above the base supports.

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Regarding claim 9, it is described above what Ulmer in view of Savino teaches. Ulmer further discloses separable means for attaching additional vertical rails to said first and said second base supports comprising a base support extending from said first and second base supports (BTL and BTR).

Regarding claim 10, Ulmer in view of Savino teaches separable means for attaching the horizontal rails to the vertical rails comprising a T-shaped member formed of polymerized sheathing and having a hollow interior; wherein each leg of said T-shaped member has an interior profile identical to the exterior profile of said horizontal rails and said vertical rails; said interior profile having a diameter equal to or greater than the exterior diameter of said polymerized sheathing surrounding each of said horizontal rails and said vertical rails (See above Figure). Savino fails to disclose a specific material in which the member is made from; however Ulmer discloses all parts of the cart corral being made of steel covered with a colored plastic sheathing.

Regarding claim 11, Ulmer in view of Savino teaches means for separably attaching said horizontal rails to said vertical rails comprising an L-shaped member formed of polymerized sheathing and having a hollow interior; wherein each leg of said L-shaped member has an interior profile identical to the exterior profile of said horizontal rails and said vertical rails; said interior profile having a diameter equal to or greater than the exterior diameter of said polymerized sheathing surrounding each of said horizontal rails and said vertical rails. (See above Figure). Savino fails to disclose a specific material in

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which the member is made from; however Ulmer discloses all parts of the cart corral being made of steel covered with a colored plastic sheathing.

Regarding claims 13-14, 29-31, Ulmer in view of Savino teaches means for attaching additional horizontal and vertical rails (16 of Savino) to said first and said second set of vertical rails comprising a quad-angled (or multi-angled) member (T-shaped member as shown in the above Figure) formed of polymerized sheathing (see above rationale) and having a hollow interior; wherein each leg of said quad-angled member extends simultaneously in planes to support said additional horizontal rail and vertical rails to said first and said second set of vertical rails; said interior having a diameter equal to or greater than the exterior diameter of said polymerized sheathing surrounding each of said first and said second set of vertical rails. The examiner further notes that Savino illustrates (see above Figure tri-angled connection members that exhibit the same characteristics and limitations described above.

Claims 4-7 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Ulmer (US 4609183) in view of Savino (US 4236697) as applied to claim 1 and 9 above, and further in view of Cruwell, Jr. (US 5201426). Regarding claim 4, it is described above what is disclosed by Ulmer in view of Savino; however the references do not disclose a third horizontal rail removably engaged and extending between a second set of vertical rails. Ulmer illustrates in Figures 2 and 3 a chain (CHR, CHL) that is removably engages and extending between the vertical rails. Cruwell illustrates in Figure 1 a rail



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(16) removably attached to the vertical rails (14 and 15). It would have been obvious to one having ordinary skill in the art at the time of invention to replace the chain (CHR) of Ulmer with the solid rail of Cruwell in order to have a rigid, more stable beam in place to keep a larger amount of carts from escaping the cart corral and damaging surrounding vehicles or people.

Regarding claims 5 and 12, Ulmer in view of Savino teaches means for attaching additional horizontal and vertical rails (16 of Savino) to said first and said second set of vertical rails comprising a quad-angled (or multi-angled) member (T-shaped member as shown in the above Figure) formed of polymerized sheathing (see above rationale) and having a hollow interior; wherein each leg of said quad-angled member extends simultaneously in planes to support said additional horizontal rail and vertical rails to said first and said second set of vertical rails; said interior having a diameter equal to or greater than the exterior diameter of said polymerized sheathing surrounding each of said first and said second set of vertical rails. The examiner further notes that Savino illustrates (see above Figure tri-angled connection members that exhibit the same characteristics and limitations described above.

Regarding claim 6, Ulmer in view of Savino teaches separable means for attaching the horizontal rails to the vertical rails comprising a T-shaped member formed of polymerized sheathing and having a hollow interior; wherein each leg of said T-shaped member has an interior profile identical to the exterior profile of said horizontal rails and

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said vertical rails; said interior profile having a diameter equal to or greater than the exterior diameter of said polymerized sheathing surrounding each of said horizontal rails and said vertical rails (See above Figure). Savino fails to disclose a specific material in which the member is made from; however Ulmer discloses all parts of the cart corral being made of steel covered with a colored plastic sheathing.

Regarding claim 7, Ulmer in view of Savino teaches means for separably attaching said horizontal rails to said vertical rails comprising an L-shaped member formed of polymerized sheathing and having a hollow interior; wherein each leg of said L-shaped member has an interior profile identical to the exterior profile of said horizontal rails and said vertical rails; said interior profile having a diameter equal to or greater than the exterior diameter of said polymerized sheathing surrounding each of said horizontal rails and said vertical rails. (See above Figure). Savino fails to disclose a specific material in which the member is made from; however Ulmer discloses all parts of the cart corral being made of steel covered with a colored plastic sheathing.

### ***Allowable Subject Matter***

Claims 15-20, 24-26 and 32-36 are allowed.

The following is an examiner's statement of reasons for allowance: The limitation "a third horizontal rail **extending between the third set of at least two spaced apart vertical rails**, each of said vertical and horizontal rails having an outer diameter and

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exterior profile" could not be found in the prior art of record. Although horizontal rails are placed between various vertical rails within the cited prior art, it would go against the function of the invention to place a horizontal rail between vertical rails PL and PR of Ulmer which is closest prior art of record to the instant application. Placement of a horizontal rail between these rails would hinder the placement of carts within the cart corral apparatus.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Response to Arguments***

Applicant's arguments filed 9/25/2008 have been fully considered but they are not persuasive. Regarding the applicant's argument:

"The Examiner argues that "a plastic coating certainly satisfies the limitation of a polymerized sheathing." (OA, near bottom of p. 3) Applicant respectfully disagrees. First, "sheathing" would be interpreted as a separate material used to cover something. The "coating" of Ulmer would not apply, as it is more like a coat of paint. Additionally, however, Applicant is claiming much more than "polymerized sheathing." Applicant is claiming "removable and replaceable polymerized sheathing," which the Ulmer reference clearly does not meet.

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The examiner respectfully disagrees. Sheathing, by definition, is considered "a layer of material applied to the outer frame of a building to serve as a base for an exterior covering" or "an exterior protective covering." The plastic coating referred to by the examiner fits the definition of a polymerized sheathing. The polymerized portion of the limitation is met by the applicant's designation that the covering is plastic and the sheathing aspect, as one of ordinary skill in the art can see above, is an exterior protective covering. The coating protects, as described in the applicant's remarks and within the specification of the prior art, from rusting.

Regarding the applicant's argument:

"The use of the word "chip" makes it clear that Ulmer does not satisfy the limitation of removable and replaceable polymerized sheathing. Nor would a coat of plastic have a "diameter" according to Applicant's claims. A coating certainly could not have a diameter "equal to or greater than the outer diameter of each [rail]."

The examiner respectfully disagrees with this assumption. In column 4, the prior art stated that the plastic coating is painted on. One of ordinary skill in the art would recognize that paint certainly has a thickness when applied to a surface. The coating, as numerous stated within the specification, is placed on the outside of the tubing or pipe. Therefore, since the paint or coating has a thickness in and of itself and is placed

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on the outside of the tubing, it would logically and inherently have an inner and outer diameter greater than that of the pipe or tubing.

Regarding the applicant's argument:

"Nor would it be obvious to use the connectors of Savino in the construction of Ulmer. Ulmer intentionally uses specialized rivets to facilitate maintenance and repair: "In addition, due to the modular construction, and the ease with which the component parts may be disassembled as a result of the use of a specialized rivet, any damage to a side portion of the shopping cart corral permits repair of the corral by the replacement only of the damaged modular component or components, rather than a whole side section, as in the prior art constructions." (Ulmer; 3:18-25)"

The examiner again respectfully disagrees with the applicant's statement that it would not be obvious to combine the prior art references. The applicant has not supplied enough information as to why they do not think it is obvious to combine the references. The examiner believes that the applicant is trying to convey that it wouldn't be obvious to combine because the Ulmer reference is easily assembled and disassembled and the Savino reference is not. The examiner notes that the Savino reference teaches in column 2 that the preferred method of fastening the coupling elements to the piping is through threadably engaging the items. One of ordinary skill in the art would appreciate that threadably engaging items together is an easily reversible process. It would be

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easy for one of ordinary skill in the art, to quickly connect and disconnect the coupling elements from the pipes. The examiner further notes that the scopes of both prior art references would not change with the combination. The scope of both prior art references is to provide an improved, durable, protective apparatus for shopping carts. Lastly, the examiner notes that KSR Int'l v Teleflex Inc. and MPEP 8, rev. 6, section 2143 states that simple substitution of one known element for another to obtain predictable results is obvious. The simple substitution of the threadable connection piece of Savino in place of the rivet system of Ulmer would have been obvious because each yield the same predictable result of a stable securement that is easily engaged and disengaged.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to MARK R. WENDELL whose telephone number is (571)270-3245. The examiner can normally be reached on Mon-Fri, 7:30AM-5PM, Alt. Fri off, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on (571) 272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./  
Supervisory Patent Examiner, Art Unit 3635

/M. R. W./  
Examiner, Art Unit 3635  
October 28, 2008